

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

UNITED STATES OF AMERICA,	:	Case No. 1-02-CR-134
	:	
Plaintiff,	:	Chief Judge Beckwith
	:	
v.	:	
	:	<b><u>MOTION FOR EXTENSION OF TIME</u></b>
MATTHEW MOYE,	:	<b><u>TO FILE SENTENCING</u></b>
	:	<b><u>MEMORANDUM AND TO CONTINUE</u></b>
Defendant.	:	<b><u>RESENTENCING HEARING</u></b>

Defendant Matthew Moye, by and through counsel, respectfully requests that this Court extend the time for the filing of Defendant Moye's Sentencing Memorandum and requests that the Court continue the Resentencing Hearing scheduled in this matter for July 7, 2006. Counsel for Defendant Moye asserts that an extension of time and continuance of the Resentencing Hearing is required to provide the United States Probation Office with the opportunity to update the Presentence Investigation Report and to provide counsel with adequate opportunity to meet with Defendant Moye prior to the filing of the memorandum.

As background, Moye's sentence was reversed and remanded, in light of the Booker decision, on March 21, 2006. On April 25, 2006, this Court issued an order appointing the Federal Public Defender's Office, and counsel was assigned to represent Defendant Moye. On May 5, 2006, a Sentencing Order was issued setting

the matter for sentencing on July 7, 2006 and directing that any Sentencing Memorandum be filed by May 15, 2006. On May 5, 2006, counsel requested an extension of time to file the Sentencing Memorandum due to the fact that Defendant Moye was incarcerated in a federal institution in Pennsylvania and counsel had limited opportunities to discuss sentencing issues with Moye. Based upon this motion, an extension of time, until June 23, 2006 was granted for the filing of the Sentencing Memorandum.

On June 23, 2006, Defendant Moye arrived at the Grant County Detention Center and notified counsel of his arrival. On June 29, 2006, counsel had an opportunity to have his first face-to-face meeting with Moye and was informed by Moye that Moye had a significant number of objections which he wished to pursue with the court. However, because of his transportation from a federal correctional institution, he did not have all of the documentation necessary to advise counsel of his objections.

Counsel for Defendant Moye requests that this Court extend the filing time for his Sentencing Memorandum for a period of at least 30 days and set an appropriate sentencing date after that time. Counsel requests additional time in this matter due to the fact that the Presentence Investigation Report will need to be updated due to a change in Sixth Circuit law. Specifically, the United States Court of Appeals

for the Sixth Circuit recently decided the case of United States v. Montanez, 442 F.3d 485 (6<sup>th</sup> Cir. 2006), which concluded that convictions under Ohio Revised Code § 2925.03, dealing with possession of bulk amounts of drugs, were no longer predicate offenses for career offender status under the Sentencing Guidelines. Counsel has discussed this matter with United States Probation Officer Lisa Hannan Egner who indicated that she would like to review the Montanez case and Defendant Moye's prior convictions, and if appropriate, update the Presentence Investigation Report in anticipation of resentencing. Further, counsel requests additional time to prepare and file a Sentencing Memorandum because Defendant Moye has recently informed him of additional objections that Moye has to the Presentence Investigation Report. Moye has informed counsel that he will need additional time to obtain all of his research and documentation to fully advise counsel of his objections.

Counsel has discussed this matter with Assistant United States Attorney Timothy D. Oakley, and Mr. Oakley has no objection to an extension of time to file the Sentencing Memorandum or a continuance of the Resentencing Hearing. United States Probation Officer Lisa Egner has been consulted, and Ms. Egner would welcome the opportunity to update the report, in light of the Montanez decision, and therefore, has no objection to an extension of time or the continuance.

Respectfully submitted,

STEVEN S. NOLDER,  
ACTING FEDERAL PUBLIC DEFENDER

s/W. Kelly Johnson

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Counsel for Defendant  
Matthew Moye

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon Timothy D. Oakley, Assistant United States Attorney, by electronic filing, on June 30, 2006.

s/W. Kelly Johnson

W. Kelly Johnson